

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIBEL VALDEZ,

Plaintiff,

vs.

ECOLAB INC.,

Defendant.

Case No. 1:08-cv-5235

AMENDED ANSWER OF DEFENDANT, ECOLAB INC.

Defendant Ecolab Inc. ("Ecolab"), for its Amended Answer to Plaintiff's Verified Complaint, states as follows:

AS TO "FIRST CAUSE OF ACTION"

1. As to the allegations in Paragraph 1 of the Verified Complaint, admits that Ecolab is a foreign corporation, but denies the remaining allegations in this paragraph.
2. Admits the allegations in Paragraph 2 of the Verified Complaint.
3. Denies the allegations in Paragraph 3 of the Verified Complaint.
4. Denies the allegations in Paragraph 4 of the Verified Complaint.
5. Denies the allegations in Paragraph 5 of the Verified Complaint.
6. Denies the allegations in Paragraph 6 of the Verified Complaint.
7. Denies the allegations in Paragraph 7 of the Verified Complaint.
8. Denies the allegations in Paragraph 8 of the Verified Complaint.
9. Denies the allegations in Paragraph 9 of the Verified Complaint.
10. Denies the allegations in Paragraph 10 of the Verified Complaint.

11. Denies the allegations in Paragraph 11 of the Verified Complaint.
12. Denies the allegations in Paragraph 12 of the Verified Complaint.
13. Denies the allegations in Paragraph 13 of the Verified Complaint.
14. Denies the allegations in Paragraph 14 of the Verified Complaint.
15. Denies the allegations in Paragraph 15 of the Verified Complaint.
16. Denies the allegations in Paragraph 16 of the Verified Complaint.
17. Denies the allegations in Paragraph 17 of the Verified Complaint.
18. Denies the allegations in Paragraph 18 of the Verified Complaint.
19. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Verified Complaint.
20. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Verified Complaint.
21. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Verified Complaint.
22. Denies the allegations in Paragraph 22 of the Verified Complaint.
23. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Verified Complaint.
24. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Verified Complaint.
25. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Verified Complaint.
26. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Verified Complaint.

27. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Verified Complaint.

28. Denies the allegations in Paragraph 28 of the Verified Complaint.

29. As to Paragraph 29 of the Verified Complaint, lacks knowledge or information sufficient to form a belief as to the truth of the allegations describing Plaintiff's purported injuries and damages. Ecolab denies, however, that it caused or contributed to causing Plaintiff's alleged injuries and/or damages, and further denies any remaining allegations.

30. Paragraph 30 of the Verified Complaint states a purported legal conclusion to which no response is required. To the extent a response is required, Ecolab lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph.

AS TO "SECOND CAUSE OF ACTION"

31. As to the allegations in Paragraph 31 of the Verified Complaint, Ecolab realleges its answers to those paragraphs of the Verified Complaint realleged.

32. As to Paragraph 32 of the Verified Complaint, admits that the Breezy air freshener product is suitable and fit for its intended purpose, but denies that it was being used for its intended purpose at the time of Plaintiff's alleged incident. Ecolab lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

33. Denies the allegations in Paragraph 33 of the Verified Complaint.

34. As to Paragraphs 34 of the Verified Complaint, Ecolab denies that the Breezy air freshener product is "defective, unsafe, unmerchantable, and unfit for its

intended and ordinary purposes"; and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

35. Denies the allegations in Paragraph 35 of the Verified Complaint.

36. As to Paragraph 36 of the Verified Complaint, lacks knowledge or information sufficient to form a belief as to the truth of the allegations describing Plaintiff's purported injuries and damages. Ecolab denies, however, that it breached any duty to Plaintiff, denies that it caused or contributed to causing Plaintiff's alleged injuries and/or damages, and further denies any remaining allegations.

37. As to Paragraph 37 of the Verified Complaint, lacks knowledge or information sufficient to form a belief as to the truth of the allegations describing Plaintiff's purported injuries and damages. Ecolab denies, however, that it breached any duty to Plaintiff, denies that it caused or contributed to causing Plaintiff's alleged injuries and/or damages, and further denies any remaining allegations.

38. Paragraph 38 of the Verified Complaint states a purported legal conclusion to which no response is required. To the extent a response is required, Ecolab lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph.

AS TO "THIRD CAUSE OF ACTION"

39. As to the allegations in Paragraph 39 of the Verified Complaint, Ecolab realleges its answers to those paragraphs of the Verified Complaint re-alleged.

40. Paragraph 40 of the Verified Complaint states a purported legal conclusion to which no response is required. To the extent a response is required,

Ecolab denies that Plaintiff has accurately stated Ecolab's duty, if any, under New York law.

41. Paragraph 41 of the Verified Complaint states a purported legal conclusion to which no response is required. To the extent a response is required, Ecolab denies that Plaintiff has accurately stated Ecolab's duty, if any, under New York law.

42. Denies the allegations in Paragraph 42 of the Verified Complaint.

43. Denies the allegations in Paragraph 43 of the Verified Complaint.

44. Denies the allegations in Paragraph 44 of the Verified Complaint.

45. As to Paragraph 45 of the Verified Complaint, lacks knowledge or information sufficient to form a belief as to the truth of the allegations describing Plaintiff's purported injuries and damages. Ecolab denies that it breached any duty to Plaintiff, denies that it caused or contributed to causing Plaintiff's alleged injuries and/or damages, and further denies any remaining allegations.

46. Paragraph 46 of the Verified Complaint states a purported legal conclusion to which no response is required. To the extent a response is required, Ecolab lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Verified Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, by *laches*, *estoppel*, waiver, and/or acquiescence.

THIRD DEFENSE

Plaintiff's damages or losses, if any, were caused or contributed to by the negligence, fault and/or wrongful acts or omissions of persons or entities other than Ecolab over whom Ecolab has and had no control or right of control and for whom Ecolab is not responsible.

FOURTH DEFENSE

Plaintiff failed to give reasonable and timely notice of any alleged breach of contract.

FIFTH DEFENSE

Plaintiff failed to give timely and proper notice of claim.

SIXTH DEFENSE

Plaintiff's damages, if any, were caused or contributed to by the substantial and unforeseeable misuse and/or modification of the products at issue.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

EIGHTH DEFENSE

Plaintiff failed to serve a Summons and Complaint as required by CPLR § 306-b.

WHEREFORE, ECOLAB prays for judgment dismissing the Verified Complaint with prejudice and on the merits and awarding it the costs and disbursements it has incurred herein and for all other relief the Court should deem just.

ECOLAB HEREBY DEMANDS A TRIAL BY JURY.

Dated: New York, New York
July 16, 2008

s/James S. Dobis, Esq.

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AFFIRMATION OF SERVICE

I, JAMES S. DOBIS, ESQ., **declare under penalty of perjury:**

1. I am a member of the law firm of Dobis, Russell & Peterson, P.C., attorneys for the defendant, Ecolab Inc., in the within matter.

2. On July 16, 2008, I served a copy of an Amended Answer to Complaint on behalf of defendant, Ecolab Inc., to plaintiff's attorney, Mauricio Malagon, Esq., MALAGON & ASSOCIATES, The Woolworth Building, 233 Broadway, Suite 1800, New York, New York 10279, via regular mail.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: New York, New York
July 16, 2008

s/James S. Dobis, Esq.

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